

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

GLORIANNA CERVANTES,

Plaintiff,

Case #08-14390

vs.

HON. SEAN F. COX

KORY TORBET and SAM PHILIPP,

Defendants.

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**MOTION FOR STAY OF PROCEEDINGS**

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NOW COME Defendants, KORY TORBET and SAM PHILIPP, by and through their attorneys, MCGRAW MORRIS P.C., by G. GUS MORRIS, and move this Honorable Court for a stay of proceedings for the following reasons:

1. This matter involves a claim for money damages pursuant to 42 U.S.C. § 1983, as well as some state claims, against the individually named Defendants, Kory Torbet and Sam Philipp.
2. This Court denied Defendants' Motion for Summary Judgment on March 1, 2010 in which Defendants argued, in part, that they were entitled to qualified immunity.

3. That on March 30, 2010, Defendants filed an Appeal as of right with the Sixth Circuit Court of Appeals from this Court's decision based on *Mitchell v Forsyth*, 472, U.S. 511; 105 S. Ct. 2806; 86 L. Ed. 2d 411 (1985).

4. That this matter is presently scheduled for a Final Pre-Trial Conference on April 12, 2010, and is currently on the March/April trailing trial docket.

5. That *Mitchell* contemplates that the trial court, upon application, shall refrain from proceeding to trial and stay proceedings until such time as the appeal issue is resolved. *Mitchell, supra; See also, Harlow v Fitzgerald*, 457 U.S. 800, 812; 102 S. Ct. 2727; 73 L. Ed. 2d 396 (1982).

WHEREFORE, Defendants, KORY TORBET and SAM PHILIPP, respectfully request this Honorable Court grant his Motion for Stay of Proceedings pending the appeal.

Respectfully submitted,

**McGRAW MORRIS P.C.**

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**BRIEF IN SUPPORT OF  
MOTION FOR STAY OF PROCEEDINGS**

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The facts of this case were set forth in the briefs of Defendants' Motion for Summary Judgment. Following this Court's March 1, 2010 decision denying Defendants' Motion for Summary Judgment, the following claims remain against Defendants: (1) Fourth Amendment claims of excessive force, unreasonable seizure and false arrest in violation of 42 USC § 1983; (2) and a state law claim of assault and battery, as well as a request for exemplary damages.

Defendants filed a Notice of Appeal with the Sixth Circuit on March 30, 2010 as of right pursuant to *Mitchell v Forsyth*, 472 U.S. 511; 105 S. Ct. 2806; 86 L. Ed. 2d 411 (1985). In that

case, the Supreme Court held that a District Court's denial of a claim of qualified immunity is immediately appealable as a final decision within the meaning of 28 U.S.C. § 1291, notwithstanding the absence of a final judgment. The Court went on to say that because of the nature of the qualified immunity doctrine, individual defendants are to be protected from the burdens of discovery and trial until a resolution of the issue on appeal. Thus, it is quite natural that the progress of civil rights actions brought under 42 U.S.C. § 1983 may be interrupted by interlocutory appeals. Further, *Mitchell* holds that the Court is obligated, upon application, not only to refrain from proceeding to trial, but to stay discovery until the issues on appeal are decided. *Mitchell*, 105 S.Ct. at 2816. *See also, Kennedy v City of Cleveland*, 797 F.2d. 297 (6<sup>th</sup> Cir. 1986).

Accordingly, Defendants respectfully request that this Honorable Court stay proceedings in this matter at the District Court level until such time as the Appeal is resolved.

Respectfully submitted,

**McGRAW MORRIS P.C.**

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**CERTIFICATE OF SERVICE**

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I hereby certify that on March 30, 2010, I served the attached MOTION FOR STAY OF PROCEEDINGS ON BEHALF OF DEFENDANTS, KORY TORBET and SAM PHILIPP, upon counsel of record; namely, J. NICHOLAS BOSTIC, ESQ., 115 W. Allegan Street, Ste. 1000, Lansing, Michigan, 48933, via United States District Court ECF System on the aforementioned date.

McGRAW MORRIS P.C.

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